

Calendar No. 206

105TH CONGRESS
1ST Session

H. R. 1847

AN ACT

To improve the criminal law relating to fraud
against consumers.

OCTOBER 9, 1997

Reported with an amendment

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1ST SESSION**H. R. 1847**

IN THE SENATE OF THE UNITED STATES

JULY 9, 1997

Received; read twice and referred to the Committee on the Judiciary

OCTOBER 9, 1997

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**AN ACT**

To improve the criminal law relating to fraud against
consumers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telemarketing Fraud
5 Prevention Act of 1997”.

6 **SEC. 2. FORFEITURE OF FRAUD PROCEEDS.**

7 Section 982(a) of title 18, United States Code, is
8 amended by adding at the end the following:

1 “(8) The Court, in sentencing a defendant for an of-
 2 fense under section 2326, shall order that the defendant
 3 forfeit to the United States any real or personal prop-
 4 erty—

5 “(A) used or intended to be used to commit or
 6 to promote the commission of such offense; if the
 7 court in its discretion so determines; taking into con-
 8 sideration the nature, scope, and proportionality of
 9 the use of the property in the offense; and

10 “(B) constituting, derived from, or traceable to
 11 the gross proceeds that the defendant obtained di-
 12 rectly or indirectly as a result of the offense.”.

13 **SEC. 3. SENTENCING GUIDELINES CHANGES.**

14 Pursuant to its authority under section 994(p) of title
 15 28, United States Code, the United States Sentencing
 16 Commission shall review and amend the sentencing guide-
 17 lines to provide a sentencing enhancement for any offense
 18 listed in section 2326 of title 18, United States Code—

19 (1) by at least 4 levels if the circumstances au-
 20 thorizing an additional term of imprisonment under
 21 section 2326(1) are present; and

22 (2) by at least 8 levels if the circumstances au-
 23 thorizing an additional term of imprisonment under
 24 section 2326(2) are present.

1 **SEC. 4. INCREASED PUNISHMENT FOR USE OF FOREIGN**
 2 **LOCATION TO EVADE PROSECUTION.**

3 Pursuant to its authority under section 994(p) of title
 4 28, United States Code, the United States Sentencing
 5 Commission shall amend the sentencing guidelines to in-
 6 crease the offense level for any fraud offense by at least
 7 2 levels if the defendant conducted activities to further
 8 the fraud from a foreign country.

9 **SEC. 5. SENTENCING COMMISSION DUTIES.**

10 The Sentencing Commission shall ensure that the
 11 sentences, guidelines, and policy statements for offenders
 12 convicted of offenses described in sections 3 and 4 are ap-
 13 propriately severe and reasonably consistent with other
 14 relevant directives and with other guidelines.

15 **SEC. 6. CLARIFICATION OF ENHANCEMENT OF PENALTIES.**

16 Section 2327(a) of title 18, United States Code, is
 17 amended by striking “under this chapter” and inserting
 18 “for which an enhanced penalty is provided under section
 19 2326 of this title”.

20 **SEC. 7. ADDITION OF CONSPIRACY OFFENSES TO SECTION**
 21 **2326 ENHANCEMENT.**

22 Section 2326 of title 18, United States Code, is
 23 amended by inserting “; or a conspiracy to commit such
 24 an offense,” after “or 1344”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Telemarketing Fraud*
 3 *Prevention Act of 1997”.*

4 **SEC. 2. CRIMINAL FORFEITURE OF FRAUD PROCEEDS.**

5 *Section 982 of title 18, United States Code, is amend-*
 6 *ed—*

7 *(1) in subsection (a)—*

8 *(A) by redesignating the second paragraph*
 9 *designated as paragraph (6) as paragraph (7);*
 10 *and*

11 *(B) by adding at the end the following:*

12 *“(8) The Court, in sentencing a defendant convicted*
 13 *of an offense under section 1028, 1029, 1341, 1342, 1343,*
 14 *or 1344, or of a conspiracy to commit such an offense, if*
 15 *the offense involves telemarketing (as that term is defined*
 16 *in section 2325), shall order that the defendant forfeit to*
 17 *the United States any real or personal property—*

18 *“(A) used or intended to be used to commit, to*
 19 *facilitate, or to promote the commission of such of-*
 20 *fense; and*

21 *“(B) constituting, derived from, or traceable to*
 22 *the gross proceeds that the defendant obtained directly*
 23 *or indirectly as a result of the offense.”; and*

24 *(2) in subsection (b)(1)(A), by striking “(a)(1) or*
 25 *(a)(6)” and inserting “(a)(1), (a)(6), or (a)(8)”.*

1 **SEC. 3. PENALTY FOR TELEMARKETING FRAUD.**

2 Section 2326 of title 18, United States Code, is amend-
3 ed by striking “may” each place it appears and inserting
4 “shall”.

5 **SEC. 4. ADDITION OF CONSPIRACY OFFENSES TO SECTION**
6 **2326 ENHANCEMENT.**

7 Section 2326 of title 18, United States Code, is amend-
8 ed by inserting “, or a conspiracy to commit such an of-
9 fense,” after “or 1344”.

10 **SEC. 5. CLARIFICATION OF MANDATORY RESTITUTION.**

11 Section 2327 of title 18, United States Code, is amend-
12 ed—

13 (1) in subsection (a), by striking “for any offense
14 under this chapter” and inserting “to all victims of
15 any offense for which an enhanced penalty is pro-
16 vided under section 2326”; and

17 (2) by striking subsection (c) and inserting the
18 following:

19 “(c) *VICTIM DEFINED.*—In this section, the term ‘vic-
20 tim’ has the meaning given that term in section
21 3663A(a)(2).”.

22 **SEC. 6. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
23 **LINES.**

24 (a) *DEFINITION OF TELEMARKETING.*—In this section,
25 the term “telemarketing” has the meaning given that term
26 in section 2326 of title 18, United States Code.

1 (b) *DIRECTIVE TO SENTENCING COMMISSION.*—Pursu-
2 *ant to its authority under section 994(p) of title 28, United*
3 *States Code, and in accordance with this section, the United*
4 *States Sentencing Commission shall—*

5 (1) *promulgate Federal sentencing guidelines or*
6 *amend existing sentencing guidelines (and policy*
7 *statements, if appropriate) to provide for substan-*
8 *tially increased penalties for persons convicted of of-*
9 *fenses described in section 2326 of title 18, United*
10 *States Code, as amended by this Act, in connection*
11 *with the conduct of telemarketing;*

12 (2) *submit to Congress an explanation of each*
13 *action taken under paragraph (1) and any additional*
14 *policy recommendations for combating the offenses de-*
15 *scribed in that paragraph.*

16 (c) *REQUIREMENTS.*—*In carrying out this section, the*
17 *Commission shall—*

18 (1) *ensure that the guidelines and policy state-*
19 *ments promulgated or amended pursuant to sub-*
20 *section (b)(1) and any recommendations submitted*
21 *thereunder reflect the serious nature of the offenses;*

22 (2) *provide an additional appropriate sentencing*
23 *enhancement if offense involved sophisticated means,*
24 *including but not limited to sophisticated concealment*

1 *efforts, such as perpetrating the offense from outside*
2 *the United States;*

3 *(3) provide an additional appropriate sentencing*
4 *enhancement for cases in which a large number of*
5 *vulnerable victims, including but not limited to vic-*
6 *tims described in section 2326(2) of title 18, United*
7 *States Code, are affected by a fraudulent scheme or*
8 *schemes;*

9 *(4) ensure that guidelines and policy statements*
10 *promulgated or amended pursuant to subsection*
11 *(b)(1) are reasonably consistent with other relevant*
12 *statutory directives to the Commission and with other*
13 *guidelines;*

14 *(5) account for any aggravating or mitigating*
15 *circumstances that might justify upward or down-*
16 *ward departures;*

17 *(6) ensure that the guidelines adequately meet*
18 *the purposes of sentencing as set forth in section*
19 *3553(a)(2) of title 18, United States Code; and*

20 *(7) take any other action the Commission consid-*
21 *ers necessary to carry out this section.*

22 *(d) EMERGENCY AUTHORITY.—The Commission shall*
23 *promulgate the guidelines or amendments provided for*
24 *under this subsection as soon as practicable, and in any*
25 *event not later than 120 days after the date of enactment*

1 *of the Telemarketing Fraud Prevention Act of 1997, in ac-*
2 *cordance with the procedures set forth in section 21(a) of*
3 *the Sentencing Reform Act of 1987, as though the authority*
4 *under that authority had not expired, except that the Com-*
5 *mission shall submit to Congress the emergency guidelines*
6 *or amendments promulgated under this section, and shall*
7 *set an effective date for those guidelines or amendments not*
8 *earlier than 30 days after their submission to Congress.*